



UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

Issued by the Department of Transportation on October 25, 1999

NOTICE OF ACTION TAKEN -- DOCKET OST-99-6194

This serves as notice to the public of the action described below, taken by the Department official indicated (no additional confirming order will be issued in this matter).

Applicants: **Lineas Aereas Chilenas S.A. (Avant Airlines) and Continental Airlines, Inc.**

Date Filed: August 31, 1999

Relief requested:

Lineas Aereas Chilenas S.A.-- Exemption from 49 U.S.C. § 41301 to engage in scheduled foreign air transportation of persons, property and mail between any point or points in Chile and any point or points in the United States, via Newark, New Jersey on a code share basis only

Lineas Aereas Chilenas S.A.--Statement of authorization under 14 CFR Part 212 to display Continental Airlines' designator code ("CO") on flights operated by Lineas Aereas Chilenas between Santiago, Chile and the Chilean coterminal points Antofagasta, Arica, Balmaceda, Calama, Concepcion, Copiapo, Iquique, La Serena, Puerto Montt, Punta Arenas, Temuco and Valdivia, for the carriage of Continental's U.S.-Chile traffic.

Continental Airlines, Inc.--Statement of authorization under 14 CFR Part 212 to display Lineas Aereas Chilenas' designator code ("OT") on flights operated by Continental between a point or points in the United States and Santiago, Chile, via Newark, New Jersey for the carriage of Lineas Aereas Chilenas' Chile-U.S. traffic.

If renewal, date and citation of last action: New authority

Applicant representative: Ricardo Mardones Sclavos--(2) 672-0787 (Lineas Aereas Chilenas S.A.)

R. Bruce Keiner, Jr.--(202) 624-2500 (Continental Airlines, Inc.)

Responsive pleadings: None filed

DISPOSITION

In a related pleading filed October 14, 1999, Continental recognized that additional steps must be completed before authorization of the code-share services to be operated by Avant. Pending receipt of such authorizations, Continental asked that we approve the joint application to the extent necessary to permit Continental to display Lineas Aereas Chilenas' code on flights operated by Continental (1) between the United States and Santiago, Chile, via Newark; and (2) between Newark and other points within the United States for the carriage of Lineas Aereas Chilenas' Chile-U.S. traffic.¹ We have granted that request here. See also, Order on Reconsideration in Docket OST-97-3285.

Action: **Approved in part/deferred in part** (Lineas Aereas Chilenas statement of authorization) Action date: October 25, 1999

Effective dates of the exemption authority granted Lineas Aereas Chilenas S.A.--October 25, 1999-October 25, 2000

The statement of authorization granted to Continental Airlines was effective when taken October 25, 1999 and will remain in effect indefinitely, subject to the conditions listed below:

Basis for approval (bilateral agreement/reciprocity): Air Transport Agreement between the United States and Chile, signed October 21, 1999.

¹ See consolidated answer of Continental to various related dockets, pg 7 fn. 6, Docket OST-97-3285.

Except to the extent exempted/waived, this authority is subject to the terms, conditions, and limitations indicated:

X Lineas Aereas Chilenas--Standard exemption conditions (attached) **X** Continental Airlines, Inc.--Certificate of Public Convenience and Necessity

Special conditions/Partial grant/Denial basis/Remarks: Based on the record in this case, we found that Lineas Aereas Chilenas is financially and operationally qualified to perform the services authorized above.² In addition, we found that Lineas Aereas Chilenas is substantially owned and effectively controlled by citizens of Chile. Specifically, Lineas Aereas Chilenas is owned by two Chilean corporations {Comercial e Inversiones del Pacifico Limitada (90%) and Comercial Huechuraba Limitada (10%)}. Lineas Aereas Chilenas is properly licensed by the Government of Chile to perform the proposed services. By memorandum dated October 22, 1999, the FAA advised us that it had no objection to our approval of a code-share whereby Avant would place its code on Continental flights flown by Continental between the United States and Chile.

The exemption authority granted to Lineas Aereas Chilenas, in addition to the conditions described above, is limited to services conducted on a code-share basis only on flights operated by Continental Airlines.

The statement of authorization granted to Continental Airlines is subject to the following conditions:

- (a) The statement of authorization will remain in effect only as long as (i) Lineas Aereas Chilenas and Continental Airlines continue to hold the necessary underlying authority to operate the code-share services at issue, and (ii) the code-share agreement providing for the code-share operations remains in effect.
- (b) Continental Airlines, Inc. must notify the Department no later than 30 days before they begin any new code-share service under the code-share services authorized here. Such notice shall identify the market(s) to be served, and the date on which the service will begin. Such notices should be filed in Docket OST-99-6194.
- (c) Continental Airlines must promptly notify the Department if the code-share agreement providing for the code-share operations is no longer effective or the carriers decide to cease operating any or all of the approved code-share services. We expect this notification to be received within 10 days of such non-effectiveness or of such decision. Such notices should be filed in Docket OST-99-6194.
- (d) The code-sharing operations conducted under this authority must comply with 14 CFR Part 257 and with any amendments to the Department's regulations concerning code-share arrangements that may be adopted. Notwithstanding any provisions in the contract between the carriers, our approval here is expressly conditioned upon the requirements that the subject foreign air transportation be sold in the name of the carrier holding out such service in computer reservation systems and elsewhere; that the carrier selling such transportation (*i.e.*, the carrier shown on the ticket) accept responsibility for the entirety of the code-share journey for all obligations established in its contract of carriage with the passenger; and that the passenger liability of the operating carrier be unaffected.
- (e) The authority granted here is specifically conditioned so that neither Lineas Aereas Chilenas nor Continental Airlines shall give any force or effect to any contractual provisions between themselves that are contrary to these conditions.

**Action taken by: Paul L. Gretch, Director
Office of International Aviation**

Under authority assigned by the Department in its regulations, 14 CFR Part 385, we found that (1) the applicant was qualified to perform the proposed operations; (2) immediate action was required and was consistent with Department policy; (3) grant of the authority was consistent with the public interest; and (4) grant of the authority would not constitute a major regulatory action under the Energy Policy and Conservation Act of 1975. To the extent not granted/deferred/dismissed, we denied all requests in the referenced Docket. We may amend, modify, or revoke the authority granted in this Notice at any time without hearing at our discretion.

² A representative of Avant Airlines has advised us that Avant will provide us with a diplomatic note designating Avant for the services at issue here in the near future.

Persons entitled to petition the Department for review of the action set forth in this Notice under the Department's regulations, 14 CFR § 385.30, may file their petitions within ten (10) days after the date of issuance of this Notice. This action was effective when taken, and the filing of a petition for review will not alter such effectiveness.

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http://dms.dot.gov/reports/reports_aviation.asp

FOREIGN AIR CARRIER CONDITIONS OF AUTHORITY

In the conduct of the operations authorized, the holder shall:

- (1) Not conduct any operations unless it holds a currently effective authorization from its homeland for such operations, and it has filed a copy of such authorization with the Department;
- (2) Comply with all applicable requirements of the Federal Aviation Administration, including, but not limited to, 14 CFR Parts 129, 91, and 36;
- (3) Comply with the requirements for minimum insurance coverage contained in 14 CFR Part 205, and, prior to the commencement of any operations under this authority, file evidence of such coverage, in the form of a completed OST Form 6411, with the Federal Aviation Administration's Program Management Branch (AFS-260), Flight Standards Service (any changes to, or termination of, insurance also shall be filed with that office);
- (4) Not operate aircraft under this authority unless it complies with operational safety requirements at least equivalent to Annex 6 of the Chicago Convention;
- (5) Conform to the airworthiness and airman competency requirements of its Government for international air services;
- (6) Except as specifically exempted or otherwise provided for in a Department Order, comply with the requirements of 14 CFR Part 203, concerning waiver of Warsaw Convention liability limits and defenses;
- (7) Agree that operations under this authority constitute a waiver of sovereign immunity, for the purposes of 28 U.S.C. 1605(a), but only with respect to those actions or proceedings instituted against it in any court or other tribunal in the United States that are:

(a) based on its operations in international air transportation that, according to the contract of

carriage, include a point in the United States as a point of origin, point of destination, or agreed stopping place, or for which the contract of carriage was purchased in the United States; or

(b) based on a claim under any international agreement or treaty cognizable in any court or other tribunal of the United States.

In this condition, the term "international air transportation" means "international transportation" as defined by the Warsaw Convention, except that all States shall be considered to be High Contracting Parties for the purpose of this definition;

- (8) Except as specifically authorized by the Department, originate or terminate all flights to/from the United States in its homeland;
- (9) Comply with the requirements of 14 CFR Part 217, concerning the reporting of scheduled, nonscheduled, and charter data;
- (10) If charter operations are authorized, comply (except as otherwise provided in the applicable bilateral agreement) with the Department's rules governing charters (including 14 CFR Parts 212 and 380); and
- (11) Comply with such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department, with all applicable orders or regulations of other U.S. agencies and courts, and with all applicable laws of the United States.

This authority shall not be effective during any period when the holder is not in compliance with the conditions imposed above. Moreover, this authority cannot be sold or otherwise transferred without explicit Department approval under Title 49 of the U.S. Code (formerly the Federal Aviation Act of 1958, as amended).



U.S. Department of Transportation
Office of the Secretary of Transportation
(41301/40109) 9/98

